THE HON. JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON, SEATTLE

OMNI INNOVATIONS, LLC, a Washington limited liability company; and JAMES S. GORDON JR. Plaintiffs, **v.** **SMARTBARGAINS.COM, LP, a Delaware Limited Partnership; Defendant.**	**No. CV 06-1129 JCC** **DECLARATION OF JAMES S. GORDON, JR. IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS**

1. I, James S. Gordon, Jr., am the Plaintiff in the above captioned lawsuit. I am over the age of 18, of sound mind, and am otherwise competent to testify.

2. I am the owner of the domain name Gordonworks.com, which I registered on or about May 1998.

3. I am also the owner of Omni Innovations, LLC.

4. I have been plagued by spam for well over eight years. Over time, my spam problem has grown more and more severe, and has now spiraled out of control, consuming more and

more of my time and resources. From late 1998 to late 2003, I fought spam by deleting, complaining, reporting, and filtering spam. My first lawsuit against a spammer was filed a full five years after the inception of this persistent spam problem, i.e. December 2003. And to this point all my efforts to curtail the onslaught of spam have all failed. I have been substantially adversely impacted by the continued onslaught of spam. Attached is a true and correct copy of a letter to my congressman concerning my first major battle with a spammer in 1999. “**EXHIBIT A”**

5. In January and February 2005, I purchased a new business computer along with a second business computer to help with the increased load of spam. In May 2005, my monthly service fee increased from approximately $40/month to about $65/month. In November 2006, this fee increased to about $180/month – in Feb 2007 to $220/month. All to handle the increased burden of managing spam. **“EXHIBIT B-C”**

6. I was forced to add “staff” by way of engaging the Assisted Server Support team at Godaddy for a monthly fee of $99. The alternative is to pay $75/hour for independent IT services.

7. It has been necessary to purchase numerous forensic tools, anti-virus tools, anti-spyware tools, and spam filtering tools over the last four years. I have spent approximately $2000.00 on these tools and services.

8. The large volume of spam received caused a displacement of over 25 Gigabytes of hard disk storage space on two computers.

9. I lost the use of my laptop as its hard drive was “overrun” with spam necessitating the purchases of the two computers in 5, above.

10. On a personal level, time dealing with spam is time away from my family. This loss of productivity is about 14 hours per week.

11. My wife, three adult children, and two friends are currently being sued by a spammer who found their names on a witness list.

12. I have suffered a significant loss of time spent on more productive pursuits, such as my Ph.D. program which was initially a three year program. After years of dealing with the spam problem, I will finish in a little more than five years. Product development efforts in my business have also been hampered, and slowed significantly.

13. I have suffered a loss of control of my intellectual/personal property, (domains) to spammers, and a loss of privacy and loss of peace of mind to enjoy my domain and the unfettered use of the internet.

14. I have been “joe-jobbed” by spammers whereby spammers subvert my domains by “stealing” my identity, which makes it appear that my domains are sending spam. In excess of 14,000 emails have been sent by fraudulent sources claiming to be Plaintiff – so far this year. As a result of this subterfuge, my domains are being blocked from sending legitimate email communications (non-commercial).

15. I have been subjected to dictionary attacks wherein a spammer uses automated means to guess at possible names and sends spam to these newly created names at gordonworks.com, thereby again increasing the volume of spam received and resulting consequences.

16. Spammers have sold my personal profile for profit to other spammers. Apparently, the buying and selling of personal profiles is a prime means of remuneration for online marketers. Each email address one owns must be de-listed from the hundreds or

thousands of “host names” owned and controlled by each spammer. And once this is accomplished, spammers and their affiliates create new host names to spam from – making successful de-listing virtually impossible. Global de-listing is not available from the majority of spammers and from spammer domains not yet created.

17. I receive 20-100 viruses/malware emails each week. This number has been as high as 500-600 per week. This has resulted in seven server crashes that necessitated the purchases of new hard drives or computers since January 2005 (through Sept. 2007). These crashes resulted from malware infections of my computers. These infections have also caused the loss of business data including tax and banking files.

18. I have also been forced to expend considerable time and labor dealing with client spam problems presented to me by my customers, including malware removal, recovered/replaced hard drives, installed virus and adware programs, etc. Because my customers cannot find the spammers who are sending the emails, they ask me to do the forensics for them.

19. I have been forced to change Internet Service Providers four times since 2000 as none were able to help me to effectively curb the spam.

20. I have sent approximately 14,000 separate and distinct complaints to my ISPs, spammers’ network service providers, Richland and Kennewick Police Depts., Federal Trade Commission, Securities and Exchange Commission, Washington State Attorney General’s Office, and four state and federal legislators.

21. I have spent time and labor writing, locating, and mailing dozens of certified cease and desist letters to spammers.

22. I have used the automated un-subscription program, SpamFire with SpamCrime Reporter, created by Matterform Media to unsubscribe from over one hundred thousand spammers' offers. This tool uses the methods available in the email and web site it points to to automatically opt-out of each email received. This includes any email received from defendants during the approximate time period of 2004-6.

23. My server has been burdened by spam which features images in the place of text - text is easier to filter. Image spam is necessarily 10-50 times larger than text messages, which are the norm of email communications, which significantly increases the use of bandwidth and usurps hard-drive capacity.

24. I have postponed adding 110 new interested customers to my server, because spamming is out-of-control. The fee paid to me would cover the base cost of Omni's server, but the added work due to spam makes this endeavor too costly.

25. I have had to increase my bandwidth capacity from less than 10GB/month to 500GB/month in the past 2 years in anticipation of the 110 new customers.

26. All of the 200+ reciprocal links I hosted on my web sites between 1996-2003 have been lost due to lack of maintenance of my web site resulting from the above-described burden of dealing with the spam problem.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

EXECUTED this 1st day of October, 2007

/s/ James S. Gordon, Jr.
James S. Gordon, Jr.

EXHIBIT A

THE GORDON GROUP
James S. Gordon, President
1419 Jadwin Avenue
Richland, WA 99352

Telephone/Fax 509/943-4715
email: jim@gordonworks.com
http://www.gordonworks.com

August 26, 1999

Tri-Cities Office
2715 St. Andrews Loop, Suite D
Pasco, WA 99301

The Honorable Doc Hastings:

I'm a small business entrepreneur having an on-line Health & Nutrition business. The genesis of my Internet "problems" was in January 1999 when I decided to unsubscribe from three online newsletters. My on-line business was picking up and I didn't have time to spend reading the many emails that I was being sent (8-10/day).

I tried, unsuccessfully, to unsubscribe from early February 1999 to Mid-March 1999. The daily emails kept on coming. In early April 1999, I asked my Internet Service Provider (ISP) to help me put a stop to the emails...nothing changed...the emails kept on coming.

I then asked my new Internet Presence Provider (IPP) to help me…nothing changed...the emails kept on coming.

In June 1999, I asked a private attorney to send the "spammer" a "cease and desist" letter…nothing changed...the emails kept on coming.

In July 1999 (actully June 1999), I asked the Washington State Attorney General's Office in Kennewick, WA for help. They sent a letter to the "spammer"…nothing changed…the emails are still coming in-but at an accelerated pace.

Yesterday, I received a computer "virus" from the "spammer"… the emails keep on coming.

I have been in contact with the FBI as my business ad page was being "hacked". They say that they can not help as the US Attorney has a "threshold" amount of damages that a business must sustain to be able to receive help ($15,000)...we calculate our losses in excess of $20,000 (roughly 15% of annual revenues) due to the hacking. Further, they said there is nothing that they could do about the spamming, either. The agents that I talked to acknowledged that a crime had been committed-but stated they did not have the resources…

Where does a small business go when their lawyer, AG, and FBI can not provide relief?

Thanks for listening!

Regards,

Washington, D.C. Office
1323 Longworth House Office Building
Washington, DC 20515-4704
(202) 225-5816
Fax: (202) 225-3251

Tri-Cities Office
2715 St. Andrews Loop, Suite D
Pasco, WA 99301
(509) 543-9396
Fax: (509) 545-1972

EXHIBIT B

Statement of Service

September 20, 2007

JIM GORDON
9804 BUCKINGHAM DR
PASCO WA 99301-6723

Jim Gordon

Account
Phone Numbe
Contact Us

Account Information

Thank you for choosing Charter Communications. We appreciate your prompt payment and value you as a customer.

Summary

Service from 09/2

Previous Balan	
Payments Rec	
Charter High-Speed Internet	52.95
Adjusts, Taxes and Fees	0.25
Total Due by 10/17/07	**$51.33**

Expect more from Charter

Moving? Let Charter help! Give us a call and we'll make sure your new home is set up with the Charter services that help make your new house a home. Handle it all with one simple call-- you may even qualify for free installation! 1-877 SAVE 014 (1-877-728-3014)

Connect with friends & family around the world With Charters Worldwide 250 Calling Plan No worries about high intl. calling rates or the hassles of calling cards. 250 minutes to 200+ worldwide destinations Anytime day or night only $20.00 per month.

Bank of America

ACCOUNT STATEMENT

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EXHIBIT C

OMNI INNOVATIONS LLC
JIM GORDON

007

FIRSTCHOICE BUSINESS CHECKING ACTIVI

POSTED	TRANSACTION DESCRIPTION/SERIAI		CREDIT AMOUNT	REFERENCE #
2-14	CHECK			M 04891180
2-13	CHECK			M 04482039
2-16	CHECK			M 03412867
2-13	CHECK			M 03759499
1-31	PURCHASE 906301300188788442627 AT NAME INTELLIGENCE 20			VCC000000
2-05	BANKOFAMERICA ATM WITHDRAWAL AT 1007 KNIGHT STRE RIC			$97D008742
2-07	PURCHASE 906202070447531442627 AT OFFICE MAX 908 N. KE			FPOS
2-09	WITHDRAWAL FOR CASHIERS CHECK			*598703078
2-12	PURCHASE 9063021000411274426270l ON 02/10 AT GODADDY.COM 480-5058855 AZ	219.96		VCC000000
2-12	PURCHASE 906302090282044426270l ON 02/09 AT BEST BUY 00005900 KENNEWICK WA	758.09		VCC000000
2-12	PURCHASE 906302090035755442627 01 ON 02/09 AT OFFICE MAX KENNEWICK WA	898.87		VCC000000
2-12	PURCHASE 906302100040175442627 01 ON 02/10 AT GODADDY.COM 480-5058855 AZ	2,423.55		VCC000000
2-13	PURCHASE 906302110046320442627 01 ON 02/11 AT OFFICE DEPOT #962 KENNEWICK WA	219.92		VCC000000
2-21	PURCHASE 906302200298721442627 01 ON 02/20 AT BEST BUY 00005900 KENNEWICK WA	66.04		VCC000000
2-22	PURCHASE 906202220343815442627 01 ON 02/22 AT COSTCO WHSE #0048 KENNEWICK WA	101.78		FPOS

* = GAP IN CHECK SEQUENCE

FIRSTCHOICE SAVINGS ACTIVITY

POSTED	AMOUNT	DESCRIPTION
2-26	.06	FED WITHHOLDING ON INT PYMT
2-26	.23	INTEREST PAYMENT

THANK YOU FOR BANKING WITH BANK OF AMERICA

CONTINUED

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